AMENDED MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE STATE OF DELAWARE REGARDING THE JAMES T. VAUGHN CORRECTIONAL CENTER, THE HOWARD R. YOUNG CORRECTIONAL INSTITUTION, AND THE SUSSEX CORRECTIONAL INSTITUTION

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I. INTRODUCTION

A. On December 29, 2006, the United States Department of Justice ("DOJ") and the State of Delaware ("State") entered into a Memorandum of Agreement ("MOA"), under which the State agreed to take specific actions intended to improve medical and mental health care services provided to inmates at Delores J. Baylor Women's Correctional Institution, Howard R. Young Correctional Institution, James T. Vaughn Correctional Center (previously known as the Delaware Correctional Center), and Sussex Correctional Institution, to resolve the DOJ's investigation pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

B. Since monitoring began in early 2007, the State of Delaware and Department of Correction staff have cooperated thoroughly with the Independent Monitor and his staff, as well as with the Department of Justice; have demonstrated a strong and consistent commitment to addressing the challenging issues posed by meeting the requirements of the MOA; and have shown a willingness to proactively and voluntarily undertake measures to improve conditions throughout the system.

C. DOJ acknowledges that significant improvements have been made in many areas covered by the MOA during the past three years, and that the State has achieved substantial compliance with many specific provisions of the MOA. The Independent Monitor has concluded, however, that the State has not achieved substantial compliance with certain other MOA requirements. In recognition of both the significant progress that has been made and the improvements that are still required, the Parties hereby enter into this Amended Memorandum of Agreement (referred to herein as "this Agreement" or "the Amended MOA"). This Amended MOA, effective December 30, 2009, replaces the MOA as the operative Agreement, narrows the areas to be monitored, and defines the types of monitoring to be performed upon the MOA's conclusion on December 29, 2009.

D. In recognition of the substantial progress made towards improving the quality of medical and mental health care delivered at the Baylor Women's Correctional Institution ("BWCI"), the greatly improved internal monitoring mechanisms established by the State, and the State's demonstrated commitment to sustaining and building on these improvements, the Parties agree that BWCI is hereby released from the requirements of this Amended MOA as of the effective date of this Agreement.

E. The DOJ also acknowledges that substantial improvements have been made to the quality of medical care delivered at the Sussex Correctional Institution ("SCI"). In recognition of these accomplishments, the greatly improved monitoring resources developed by the State, and the State's demonstrated commitment to sustaining and building on these improvements, the Parties agree that paragraphs 9, 14, 15, 16, 19, 20, 39 and 41 of this Agreement shall not apply to SCI. The Parties further agree that all other provisions of this Agreement shall apply to SCI

only to the extent they relate to the provision of mental health care services at SCI.

F. The Parties to this Agreement do not intend to create in any non-party the status of third party beneficiary. This Agreement shall not be construed to create a private right of action to any non-party against the State or the United States. The rights, duties and obligations contained in this Agreement shall bind only the Parties to this Agreement.

G. In entering into this Agreement, the State does not admit any violations of the constitutional rights of inmates confined at any of its facilities, nor does it admit any violation of state or federal law. This Agreement may not be used as evidence of liability in any other legal proceeding. The State remains firmly committed to providing appropriate medical and mental health care at its facilities.

H. The Parties acknowledge that Correctional Medical Services ("CMS") currently provides medical and mental health care to inmates at the State's correctional facilities and that such care is provided pursuant to a contract with CMS that sets forth the terms and conditions of the relationship between the State and CMS. The State shall be responsible for ensuring that CMS (or any successor contractor) complies with the terms of this Agreement. Nothing in this paragraph shall abrogate the State's responsibility to comply fully with the terms of this Agreement.

II. DEFINITIONS

In this Agreement, the following definitions apply:

A. "The Agreement" refers to this Amended Memorandum of Agreement.

B. "Compliance Coordinator" refers to the State employee who, for the duration of this Agreement, shall serve as a liaison between the State, the Monitor and DOJ, and shall assist with the State's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate the State's compliance and implementation of activities required by this Agreement; (b) facilitate the provision of data, documents and other access to State employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; (d) assist in assigning compliance tasks to State personnel, as directed by the Commissioner of the Delaware Department of Correction or his designee; and (e) take primary responsibility for collecting information for the State Compliance Reports described in paragraph 57.

C. "Effective date" means December 30, 2009.

D. The "Facilities" means the Howard R. Young Correctional Institution, the James T. Vaughn Correctional Center, and, to the extent reflected in Section I.E. of this

Agreement, the Sussex Correctional Institution, as well as any facility that is built to replace or supplement any one of them.

E. "Generally accepted professional standards" means those industry standards accepted by a significant majority of professionals in the relevant field, and reflected in the standards of care such as those published by the National Commission on Correctional Health Care ("NCCHC"). DOJ acknowledges that NCCHC has established different standards for jail and prison populations, and that the relevant standard that applies under this Agreement may differ for pre-trial and sentenced inmates. As used in this Agreement, the terms "adequate," "appropriate," and "sufficient" refer to standards established by clinical guidelines in the relevant field. The Parties shall consider clinical guidelines promulgated by professional organizations in assessing whether generally accepted professional standards have been met.

F. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

G. "Inmates" means individuals sentenced to, incarcerated in, detained at, or otherwise confined at the Facilities.

H. "Inmates with special needs" means inmates who are identified as suicidal, mentally ill, developmentally disabled, seriously or chronically ill, who are physically disabled, who have trouble performing activities of daily living, or who are a danger to themselves.

I. "Isolation" means the placement of an inmate alone in a locked room or cell, except that it does not refer to adults single-celled in general population.

J. "Juveniles" means individuals detained at a Facility who are under the age of eighteen (18).

K. "Medical Experts" refers to the physicians or other health care professionals with expertise in correctional health care who are approved by DOJ and retained by the State to conduct Phase II monitoring.

L. "Medical staff" means medical professionals, nursing staff, and certified medical assistants.

M. "Medical professional" means a licensed physician, licensed physician assistant, or a licensed nurse practitioner providing service at a Facility and currently licensed to the extent required by the State of Delaware to deliver those health services he or she has undertaken to provide.

N. "Mental health professional" means an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, psychiatric social work, activity therapy, recreational therapy or psychiatric nursing, currently

licensed to the extent required by the State of Delaware to deliver those mental health services he or she has undertaken to provide.

O. "The MOA" refers to the "Memorandum Of Agreement Between The United States Department Of Justice And The State Of Delaware Regarding The Delores J. Baylor Women's Correctional Institution, The Delaware Correctional Center, The Howard R. Young Correctional Institution, And The Sussex Correctional Institution," entered into by the Parties on December 29, 2006.

P. "Monitor" as used in this Agreement means the Monitor established by Section VII of the MOA, and all persons, independent medical experts or entities retained by the Monitor (or, during Phase II Monitoring, retained by the State) to assist in performing the monitoring tasks.

Q. "Nursing staff" means registered nurses, licensed practical nurses, and licensed vocational nurses providing services at a Facility and currently licensed to the extent required by the State of Delaware to deliver those health services they have undertaken to provide.

R. "The Parties" means the State of Delaware (the "State") and the United States Department of Justice, Civil Rights Division ("DOJ").

S. "Phase II Monitoring" means activities conducted by the Monitor, the Medical Experts, and/or the State to monitor and report on compliance with this Agreement between July 1, 2010 and the termination of this Agreement.

T. "Security Staff" means all employees, irrespective of job title, whose regular duties include the supervision of inmates at the Facilities.

U. The "State" means officials of the State of Delaware, including officials of the Department of Correction and its Bureau of Prisons, and their successors, contractors and agents.

V. "Train," when the term is used in remedial provisions of this Agreement, means to adequately instruct in the skills addressed, including assessment of mastery of instructional material.

III. MEDICAL AND MENTAL HEALTH CARE

GENERAL PROVISIONS

1. Standard. The State shall ensure that services to address the serious medical and mental health needs of all inmates meet generally accepted professional standards.

2. Policies and Procedures. The State shall maintain and revise as necessary policies and procedures to ensure that adequate ongoing medical and mental health

services are provided to inmates determined to need such care. Medical and mental health policies and procedures shall be readily available to relevant staff.

3. Record Keeping. The State shall maintain a unified medical and mental health file for each inmate and all medical records, including laboratory reports, shall be timely filed in the medical file. The medical records unit shall be adequately staffed to prevent significant lags in filing records in an inmate's medical record. The State shall maintain the medical records such that persons providing medical or mental health treatment may gain access to the record as needed. The medical record should include information from prior incarcerations.

4. Medication and Laboratory Orders. The State shall maintain policies, procedures, and practices consistent with generally accepted professional standards to ensure timely responses to orders for medications and laboratory tests. Such policies, procedures, and practices shall be periodically evaluated to ensure that delays in inmates' timely receipt of medications and laboratory tests are prevented.

Staffing and Training

5. Staffing. The State shall maintain sufficient staffing levels of qualified medical staff and mental health professionals (including psychiatrists) to provide care for inmates' serious medical and mental health needs that meets generally accepted professional standards.

6. Medical and Mental Health Staff Management. The State shall ensure that a full-time medical director is responsible for managing the medical program. The State shall also provide a director of nursing and adequate administrative medical and mental health management. In addition, the State shall ensure that a designated clinical director shall supervise inmates' mental health treatment at the Facilities. These positions may be filled either by State employees, by independent contractors retained by the State, or pursuant to the State's contract with a correctional health care vendor.

7. Medical and Mental Health Staff Training. The State shall ensure that all medical staff and mental health professionals are adequately trained to meet the serious medical and mental health needs of inmates. All such staff shall receive documented orientation and in-service training in accordance with their job classifications, and training topics shall include suicide prevention and the identification and care of inmates with mental disorders.

8. Security Staff Training. The State shall ensure that security staff is adequately trained in the identification, timely referral, and proper supervision of inmates with serious medical or mental health needs. The State shall ensure that security staff assigned to mental health units receives additional training related to the proper supervision of inmates suffering from mental illness.

Screening and Treatment

9. Medical Screening. The State shall ensure that all inmates receive an appropriate and timely medical screening by a medical staff member upon arrival at a Facility. The State shall ensure that such screening enables staff to identify individuals with serious medical or mental health conditions, including acute medical needs, infectious diseases, chronic conditions, physical disabilities, mental illness, suicide risk, and drug and/or alcohol withdrawal. Separate mental health screening shall be provided as described in Paragraph 28.

10. Privacy. The State shall make reasonable efforts to ensure inmate privacy when conducting medical and mental health screening, assessments, and treatment. However, maintaining inmate privacy shall be subject to legitimate security concerns and emergency situations.

11. Health Assessments. The State shall ensure that all inmates receive timely medical and mental health assessments. Upon intake, the State shall ensure that a medical professional identifies those persons who have chronic illness. Those persons with chronic illness shall receive a full health assessment within seven (7) days of intake, depending on their physical condition. Persons without chronic illness should receive a full health assessment within fourteen (14) days of intake. The State will ensure that inmates with chronic illnesses will be tracked in a standardized fashion. A readmitted inmate or an inmate transferred from another facility who has received a documented full health assessment within the previous twelve (12) months, and whose receiving screening shows no change in health status, need not receive a new full medical and mental health assessment. For such inmates, medical staff and mental health professionals shall review prior records and update tests and examinations as needed.

12. Referrals for Specialty Care. The State shall ensure that: a) inmates whose serious medical or mental health needs exceed the services available at their Facility shall be referred in a timely manner to appropriate medical or mental health care professionals; b) the findings and recommendations of such professionals are tracked and documented in inmates' medical files; and c) treatment recommendations are followed, as clinically indicated and as appropriate in a correctional setting.

13. Treatment or Accommodation Plans. Inmates with special needs shall have special needs plans. For inmates with special needs who have been at the Facility for thirty (30) days, this shall include appropriate discharge planning. The DOJ acknowledges that for sentenced inmates with special needs, such discharge planning shall be developed in relation to the anticipated date of release.

14. Drug and Alcohol Withdrawal. The State shall maintain appropriate written policies, protocols, and practices, consistent with standards of appropriate medical care, to identify, monitor, and treat inmates at risk for, or who are experiencing,

drug or alcohol withdrawal. The State shall maintain appropriate withdrawal and detoxification programs.

15. Communicable and Infectious Disease Management. The State shall adequately maintain statistical information regarding contagious disease screening programs and other relevant statistical data necessary to adequately identify, treat, and control infectious diseases.

16. Clinic Space and Equipment. The State shall ensure that all face-to-face nursing and medical professional examinations occur in settings that provide appropriate privacy and permit a proper clinical evaluation, including an adequately-sized examination room that contains an examination table, an operable sink for hand-washing, adequate lighting, and adequate equipment. The amount of privacy required to satisfy this provision shall take security needs into account. Each clinic shall have at least one microscope available for diagnostic evaluations.

Access to Care

17. Access to Medical and Mental Health Services. The State shall ensure that all inmates have adequate opportunity to request and receive medical and mental health care. Appropriate medical staff shall screen all written requests for medical and/or mental health care within twenty-four (24) hours of submission, and see patients within the next seventy-two (72) hours, or sooner if medically appropriate. The State shall maintain sufficient security staff to ensure that inmates requiring treatment are escorted in a timely manner to treatment areas. The State shall maintain a sick call policy and procedure that includes an explanation of the order in which to schedule patients, a procedure for scheduling patients, where patients should be treated, the requirements for clinical evaluations, and the maintenance of a sick call log. Treatment of inmates in response to a sick call slip should occur in a clinical setting.

18. Isolation Rounds. The State shall ensure that medical staff make daily sick call rounds in the isolation areas, and that nursing staff make rounds at least three times a week, to give inmates in isolation adequate opportunities to contact and discuss health and mental health concerns with medical staff and mental health professionals in a setting that affords as much privacy as security will allow.

Chronic Disease Care

19. Chronic Disease Management Program. The State shall maintain a written chronic care disease management program, consistent with generally accepted professional standards, which provides inmates suffering from chronic illnesses with appropriate diagnosis, treatment, monitoring, and continuity of care. As part of this program, the State shall maintain a registry of inmates with chronic diseases.

20. Immunizations. The State shall make reasonable efforts to obtain immunization records for all juveniles who are detained at the Facilities for more than one (1) month. The State shall ensure that medical staff updates immunizations for such juveniles in accordance with nationally recognized guidelines and state school admission requirements. The physicians who determine that the vaccination of a juvenile or adult inmate is medically inappropriate shall properly record such determination in the inmate's medical record. The State shall continue implementing policies to ensure that inmates for whom influenza, pneumonia and Hepatitis A and B vaccines are medically indicated are offered these vaccines.

Medication Administration and Management

21. Medication Administration. The State shall ensure that all medications, including psychotropic medications, are prescribed appropriately and administered in a timely manner to adequately address the serious medical and mental health needs of inmates. The State shall ensure that inmates who are prescribed medications for chronic illnesses that are not used on a routine schedule, including inhalers for the treatment of asthma, have access to those medications as medically appropriate. The State shall maintain and implement adequate policies and procedures for medication administration and adherence. The State shall ensure that the prescribing practitioner is notified if a patient misses a medication dose on three (3) consecutive days, and shall document that notice. The State's formulary shall not unduly restrict medications. The State shall review its medication administration policies and procedures and make any appropriate revisions. The State shall ensure that medication administration records ("MARs") are appropriately completed and maintained in each inmate's medical record. As part of the quality assurance program set forth in Section V of this Agreement, a qualified medical professional or registered nurse supervisor shall review MARs on a periodic basis to determine whether policies and procedures are being followed.

22. Continuity of Medication. The State shall ensure that arriving inmates who report that they have been prescribed medications shall receive the same or comparable medication as soon as is reasonably possible, unless a medical professional determines such medication is inconsistent with generally accepted professional standards. If the inmate's reported medication is ordered discontinued or changed by a medical professional, a medical professional shall conduct a face-to-face evaluation of the inmate as medically appropriate.

23. Medication Management. The State shall maintain and implement guidelines and controls regarding the access to, and storage of, medications as well as the safe and appropriate disposal of medication and medical waste.

24. Access to Emergency Care. The State shall ensure that inmates with emergency medical or mental health needs receive timely and appropriate care, including prompt referrals and transports for outside care when medically necessary.

25. Treatment. The State shall ensure that qualified mental health professionals provide timely, adequate, and appropriate screening, assessment, evaluation, treatment and structured therapeutic activities to inmates requesting mental health services, inmates who become suicidal, and inmates who enter with serious mental health needs or develop serious mental health needs while incarcerated.

26. Psychiatrist Staffing. The State shall retain sufficient psychiatrists to enable the Facilities to address the serious mental health needs of all inmates with timely and appropriate mental health care consistent with generally accepted professional standards. This shall include retaining appropriately licensed and qualified psychiatrists for a sufficient number of hours per week to see patients, prescribe and adequately monitor psychotropic medications, participate in the development of individualized treatment plans for inmates with serious mental health needs, review charts in the context of rendering appropriate mental health care, review and respond to the results of diagnostic and laboratory tests, and be familiar with and follow policies, procedures, and protocols.

27. Psychiatrist Duties and Authority. The psychiatrist shall collaborate with the chief psychologist in mental health services management as well as clinical treatment, shall communicate problems and resource needs to the Warden and chief psychologist, and shall have medically appropriate autonomy for clinical decisions at the Facility. The psychiatrist shall supervise and oversee the treatment team.

28. Mental Health Screening. The State shall maintain and implement adequate policies, procedures, and practices consistent with generally accepted correctional mental health care standards to ensure that all inmates receive an adequate initial mental health screening by appropriately trained staff within twenty-four (24) hours after intake. Such screening shall include an individual private (consistent with security limitations) interview of each incoming inmate, including whether the inmate has a history of mental illness, is currently receiving or has received psychotropic medications, has attempted suicide, or has suicidal propensities. Documentation of the screening shall be maintained in the appropriate medical record. Inmates who have been on psychotropic medications prior to intake will be assessed by a psychiatrist as to the need to continue those medications in a timely manner, no later than seven to ten (7-10) days after intake or sooner if clinically appropriate. These inmates shall remain on previously prescribed psychotropic medications pending psychiatrist assessment. Incoming inmates who are in need of emergency mental health services shall receive such care immediately after intake. Incoming inmates who require resumption of psychotropic medications shall be seen by a psychiatrist as soon as clinically appropriate.

29. Mental Health Assessment and Referral. The State shall maintain and implement adequate policies, procedures, and practices consistent with generally accepted professional standards to ensure timely and appropriate mental health assessments by qualified mental health professionals for those inmates whose mental health

histories, or whose responses to initial screening questions, indicate a need for such an assessment. Such assessments shall occur within seventy-two (72) hours of the inmate's mental health screening or the identification of the need for such assessment, whichever is later. The State shall also ensure that inmates have access to a confidential self-referral system by which they may request mental health care without revealing the substance of their request to security staff. Written requests for mental health services shall be forwarded to a qualified mental health professional and timely evaluated by him or her. The State shall ensure adequate and timely treatment for inmates whose assessments reveal serious mental illness, including timely and appropriate referrals for specialty care and regularly scheduled visits with qualified mental health professionals.

30. Mental Health Treatment Plans. The State shall ensure that a qualified mental health professional prepares in a timely manner and regularly updates an individual mental health treatment plan for each inmate who requires mental health services. The State shall also ensure that the plan is timely and consistently implemented. Implementation of and any changes to the plan shall be documented in the inmate's medical/mental health record.

31. Crisis Services. The State shall ensure an adequate array of crisis services to appropriately manage psychiatric emergencies. Crisis services shall not be limited to administrative/disciplinary isolation or observation status. Inmates shall have access to in-patient psychiatric care when clinically appropriate.

32. Review of Disciplinary Charges for Mental Illness Symptoms. The State shall ensure that disciplinary charges against inmates with serious mental illness who are placed in Isolation are reviewed by a qualified mental health professional to determine the extent to which the charge may have been related to serious mental illness, and to determine whether an inmate's serious mental illness should be considered by the State as a mitigating factor when punishment is imposed on inmates with a serious mental illness.

33. Procedures for Mentally Ill Inmates in Isolation or Observation Status. The State shall maintain policies, procedures, and practices consistent with generally accepted professional standards to ensure that all mentally ill inmates on the Facility's mental health caseload who are housed in Isolation receive timely and appropriate treatment, including completion and documentation of regular rounds in the Isolation units at least once per week by qualified mental health professionals in order to assess the serious mental health needs of those inmates. Inmates with serious mental illness who are placed in Isolation shall be evaluated by a qualified mental health professional within twenty- four (24) hours and regularly thereafter to determine the inmate's mental health status, which shall include an assessment of the potential effect of the Isolation on the inmate's mental health. During these regular evaluations, the State shall evaluate whether continued Isolation is appropriate for that inmate, considering the assessment of the qualified mental health professional, or whether the inmate would be

appropriate for graduated alternatives. The State shall adequately document all admissions to, and discharges from, Isolation, including a review of treatment by a psychiatrist. The State shall provide adequate facilities for observation, with no more than two inmates per room.

34. Mental Health Services Logs and Documentation. The State shall ensure that the State maintains an updated log of inmates receiving mental health services, which shall include both those inmates who receive counseling and those who receive medication. The log shall include each inmate's name, diagnosis or complaint, and next scheduled appointment. Each clinician shall have ready access to a current log listing any prescribed medication(s) and dosages for inmates on psychotropic medications. In addition, inmate's files shall contain current and accurate information regarding any medication changes ordered in at least the past year.

IV. SUICIDE PREVENTION

35. Staff Training. The State shall ensure that all existing and newly hired correctional, medical, and mental health staff receives an initial eight-hour training on suicide prevention curriculum described above. Following completion of the initial training, the State shall ensure that a minimum of two (2) hours of refresher training are completed by all correctional care, medical, and mental health staff each year.

36. Mental Health Records. Upon admission, the State shall immediately request all pertinent mental health records regarding the inmate's prior hospitalization, court-ordered evaluations, medication, and other treatment. DOJ acknowledges that the State's ability to obtain such records depends on the inmate's consent to the release of such records and the cooperation of health care providers at non-DOC facilities.

37. Identification of Inmates at Risk of Suicide. Inmates at risk for suicide shall be placed on suicide precautions until they can be assessed by qualified mental health personnel. Inmates at risk of suicide include those who are actively suicidal, either threatening or engaging in self-injurious behavior; inmates who are not actively suicidal, but express suicidal ideation (e.g., expressing a wish to die without a specific threat or plan) and/or have a recent prior history of self-destructive behavior; and inmates who deny suicidal ideation or do not threaten suicide, but demonstrate other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-injury.

38. Suicide Risk Assessment. The State shall ensure that a formalized suicide risk assessment by a qualified mental health professional is performed within an appropriate time not to exceed twenty-four (24) hours of the initiation of suicide precautions. The assessment of suicide risk by qualified mental health professionals shall include, but not be limited to, the following: description of the

antecedent events and precipitating factors; suicidal indicators; mental status examination; previous psychiatric and suicide risk history, level of lethality; current medication and diagnosis; and recommendations/treatment plan. Findings from the assessment shall be documented on both the assessment form and health care record.

39. Communication. The State shall ensure that any staff member who places an inmate on suicide precautions shall document the initiation of the precautions, level of observation, housing location, and conditions of the precautions. The State shall maintain and implement policies and procedures to ensure that the documentation described above is provided to mental health staff and that in-person contact is made with mental health staff to alert them of the placement of an inmate on suicide precautions. The State shall ensure that mental health staff thoroughly reviews an inmate's health care record for documentation of any prior suicidal behavior. The State shall maintain a policy requiring mental health to utilize progress notes to document each interaction and/or assessment of a suicidal inmate. The decision to upgrade, downgrade, discharge, or maintain an inmate on suicide precautions shall be fully justified in each progress note. An inmate shall not be downgraded or discharged from suicide precautions until the responsible mental health staff has thoroughly reviewed the inmate's health care record, as well as conferred with correctional personnel regarding the inmate's stability. Multidisciplinary case management team meetings (to include Facility officials and available medical and mental health personnel) shall occur on a weekly basis to discuss the status of inmates on suicide precautions.

40. Housing. The State shall ensure that all inmates placed on suicide precautions are housed in suicide-resistant cells (i.e., cells without protrusions that would enable inmates to hang themselves). The location of the cells shall provide full visibility to staff. At the time of placement on suicide precautions, medical or mental health staff shall write orders setting forth the conditions of the observation, including but not limited to allowable clothing, property, and utensils, and orders addressing continuation of privileges, such as showers, telephone, visiting, recreation, etc., commensurate with the inmate's security level. Removal of an inmate's prison jumpsuit (excluding belts and shoelaces) and the use of any restraints shall be avoided whenever possible, and used only as a last resort when the inmate is engaging in self-destructive behavior. The Parties recognize that security and mental health staff are working towards the common goal of protecting inmates from self-injury and from harm inflicted by other inmates. Such orders must therefore take into account all relevant security concerns, which can include issues relating to the commingling of certain prison populations and the smuggling of contraband. Mental health staff shall give due consideration to such factors when setting forth the conditions of the observation, and any disputes over the privileges that are appropriate shall be resolved by the Warden or his or her designee. Scheduled court hearings shall not be cancelled because an inmate is on suicide precautions.

41. Observation. The State shall maintain and implement policies and procedures pertaining to observation of suicidal inmates, whereby an inmate who is not actively suicidal, but expresses suicidal ideation (e.g., expressing a wish to die without a specific threat or plan) and/or has a recent prior history of self-destructive behavior, or an inmate who denies suicidal ideation or does not threaten suicide, but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-injury, shall be placed under close observation status and observed by staff at staggered intervals not to exceed every 15 minutes (e.g., 5, 10, 7 minutes). An inmate who is actively suicidal, either threatening or engaging in self-injurious behavior, shall be placed on constant observation status and observed by staff on a continuous, uninterrupted basis. Mental health staff shall assess and interact with (not just observe) inmates on suicide precautions on a daily basis.

42. Step-Down Observation. The State shall maintain and implement a "step-down" level of observation whereby inmates on suicide precaution are released gradually from more restrictive levels of supervision to less restrictive levels for an appropriate period of time prior to their discharge from suicide precautions. The State shall ensure that all inmates discharged from suicide precautions continue to receive follow-up assessment in accordance with a treatment plan developed by a qualified mental health professional.

43. Intervention. The State shall maintain and implement an intervention policy to ensure that all staff who come into contact with inmates are trained in standard first aid and cardiopulmonary resuscitation; all staff who come into contact with inmates participate in annual "mock drill" training to ensure a prompt emergency response to all suicide attempts; and shall ensure that an emergency response bag that includes appropriate equipment, including a first aid kit and emergency rescue tool, shall be in close proximity to all housing units. All staff that comes into regular contact with inmates shall know the location of this emergency response bag and be trained in its use.

44. Mortality and Morbidity Review. The State shall maintain and implement policies, procedures, and practices to ensure that a multidisciplinary review is established to review all suicides and serious suicide attempts (e.g., those incidents requiring hospitalization for medical treatment). At a minimum, the review shall comprise an inquiry of: a) circumstances surrounding the incident; b) Facility procedures relevant to the incident; c) all relevant training received by involved staff; d) pertinent medical and mental health services/reports involving the victim; e) possible precipitating factors leading to the suicide; and f) recommendations, if any, for changes in policy, training, physical plant, medical or mental health services, and operational procedures. When appropriate, the review team shall develop a written plan (and timetable) to address areas that require corrective action.

V. QUALITY ASSURANCE

45. Policies and Procedures. The State shall maintain and implement written quality assurance policies and procedures to regularly assess and ensure compliance with the terms of this Agreement. These policies and procedures should include, at a minimum: provisions requiring an annual quality management plan and annual evaluation; quantitative performance measurement; tracking and trending of data; creation of a multidisciplinary team; morbidity and mortality reviews with self-critical analysis, and periodic review of emergency room visits and hospitalizations for ambulatory-sensitive conditions.

46. Corrective Action Plans. The State shall maintain and implement policies and procedures to address problems that are uncovered during the course of quality assurance activities. The State shall maintain and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.

VI. IMPLEMENTATION

47. Revision of Activities and Documents. The State shall revise and/or develop as necessary its current policies, procedures, protocols, training, staffing and practices to ensure that they are consistent with, incorporate, address and implement all provisions of this Agreement. The State shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement.

48. Dissemination of Agreement. Within thirty (30) days of the effective date of this Agreement, the State shall distribute copies of the Agreement to all relevant staff, including all medical, mental health and security staff at the Facilities and explain it as appropriate.

VII. MONITORING, ENFORCEMENT AND TERMINATION

49. Termination. This Agreement shall terminate when the State has achieved substantial compliance with the substantive provisions of this Agreement, and has maintained that substantial compliance for one (1) year. The one year period for maintenance of substantial compliance may include periods of continued substantial compliance which commenced prior to the effective date of this Agreement. "Substantial compliance" indicates that the State has achieved compliance with most or all requirements of the relevant provisions of the Agreement. Any alleged noncompliance must be systemic. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, intermittent compliance during a period of sustained noncompliance shall not constitute substantial compliance. The DOJ, in

its good faith discretion, will determine whether the State has maintained substantial compliance for the one year period, and a finding of substantial compliance may not be unreasonably withheld.

50. Subject Matter Substantial Compliance and Early Termination. Subsections of this Agreement pertaining to specific subject matter areas, such as staffing and training, screening and treatment, access to care, chronic disease care, medication administration and management, emergency care, mental health care, and suicide prevention, may be terminated separately and independently from the provisions of the Agreement that have not yet reached substantial compliance, if the State reaches substantial compliance in these areas and maintains substantial compliance for one (1) year. The burden shall be on the State to demonstrate that the State has achieved substantial compliance with a particular section of this Agreement, and the DOJ, in its good faith discretion, will determine whether the State has maintained substantial compliance in a specific subject matter area for the one (1) year period. A finding of substantial compliance may not be unreasonably withheld. The DOJ may also release the State from the obligations of any specific provision of this Agreement if the DOJ concludes, in its good faith discretion, that the State has achieved a sufficient sustainable level of compliance with the provision.

51. State Response to DOJ Questions. Within thirty (30) days of receipt of written questions from the DOJ concerning the State's compliance with this Agreement, the State shall provide the DOJ with written answers and any requested documents regarding the State's compliance with the requirements of this Agreement.

52. State Documentation of Compliance. The State shall maintain sufficient records to document its compliance with all of the requirements of this Agreement.

53. Extension of Existing Monitoring Agreement. The State agrees to extend or amend the existing Monitoring Agreement with Joshua Martin III to continue serving as the Monitor under the current terms of that Agreement until June 30, 2010. The Monitor shall be responsible for conducting site visits at the Facilities between January 1, 2010 and June 30, 2010 to monitor compliance with the Amended MOA. The Monitor and the State shall, by mutual agreement and with the consent of DOJ, arrange for State personnel to assume increasing responsibility for auditing compliance with the Amended MOA. The State further agrees to take reasonable steps to negotiate by April 1, 2010 a mutually acceptable agreement with Mr. Martin for monitoring services to be performed between July 1, 2010 and January 30, 2011 in accordance with paragraph 57 of this Agreement. If Mr. Martin is unable or unwilling to serve as the Monitor under this Paragraph 53, the Parties shall together select a Monitor, with first consideration to be given to a member of the current monitoring team.

54. Limitations on Public Disclosures by Monitor. The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the State, its agents or employees. The Monitor shall not issue statements or make findings with regard to any act or omission of the State, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any action brought by any Party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the State, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the Parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. The limitations on public disclosures by the Monitor have equal application to the Monitor's agents and members of the monitoring team.

55. Monitor's Fees. The State shall bear all reasonable fees and costs of the Monitor in accordance with the existing Monitoring Agreement and any subsequent monitoring agreement.

56. Monitor's Duties and Responsibilities. The Monitor shall have only the duties, responsibilities and authority conferred by this Agreement; the Monitor may not modify, amend, diminish, or expand this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the State or the Commissioner of the Delaware Department of Correction. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement, provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

57. Phase II Monitoring and Reporting. Effective July 1, 2010, the State will monitor compliance with this Agreement under the supervision and direction of the Monitor and the Medical Experts. The DOC Medical Director, the Medical Experts, and the Monitor shall jointly issue a Compliance Report on or before January 31, 2011, and the Monitor's duties and authority shall terminate upon issuance of this initial Compliance Report, with the consent of the Parties. Thereafter, the DOC Medical Director and the Medical Experts shall share joint responsibility for monitoring compliance with this Agreement. The DOC Medical Director, Compliance Coordinator, and Medical Experts shall share joint responsibility for issuing Compliance Reports to the DOJ every six months

thereafter, until substantial compliance is achieved. The parties anticipate that, as the State's self-monitoring increases, the participation of the Medical Experts in monitoring activities may be reduced.

58. Monitor's Access. The State shall provide the Monitor with full and unrestricted access to the Facilities, relevant State and Facility staff and employees, and any documents (including databases) necessary to carry out the duties assigned to the State by this Agreement. The Monitor's right of access includes, but is not limited to, all documents regarding medical care, mental health care, suicide prevention, or protocols or analyses involving one of those subject areas. The Monitor shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a court or DOJ, absent written notice to the State and either written consent by the State or a court order authorizing disclosure.

59. Monitor's Communication with the Parties. The Monitor shall maintain regular contact with the State and DOJ necessary to monitor the implementation of this Agreement. The Monitor shall be permitted to initiate and receive ex parte communications with the Parties and the Parties' consultants.

60. DOJ Access. DOJ shall continue to have full and unrestricted access to all documents (including databases), staff, inmates and the Facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege or applicable self-evaluative privileges (e.g., 24 Del. § 1768). Should the State decline to provide DOJ with access to a document based on attorney-client privilege, the State shall provide the Monitor and DOJ with a log describing the document. DOJ's right of access includes, but is not limited to, all documents regarding medical care, mental health care, suicide prevention and any protocols or analyses involving those subject areas. This Agreement does not authorize, nor shall it be construed to authorize, access to any State documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the State, and the Monitor. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a court or the Monitor, absent written notice to the State and either written consent by the State or a court order authorizing disclosure. Throughout the duration of this Agreement, letters between counsel for the DOJ and counsel for the State shall be confidential and subject to the Confidentiality Agreement between the DOJ and the State entered into on May 3, 2006 and supplemented by the Non-Waiver Agreement dated September 28, 2006.

61. Noncompliance. If DOJ believes that the State has failed to substantially comply with any obligation under this Agreement, DOJ will, prior to seeking judicial action to enforce the terms of this Agreement, give written notice of the failure to the State. The Parties shall conduct good-faith discussions to resolve the dispute. If the Parties are unable to reach agreement within fifteen (15) days of the DOJ's

written notice, the Parties shall submit the dispute to mediation and shall split the cost of the mediator. The Parties shall attempt in good faith to mediate the dispute for a minimum of thirty (30) days prior to initiating any court action. DOJ commits to work in good faith with the State to avoid enforcement actions. However, in case of an emergency posing an immediate threat to the health or safety of inmates, the DOJ may omit the notice and cure requirements herein (including the provision regarding mediation), before seeing judicial action. Non-action by the DOJ shall not constitute a waiver of the right to seek judicial action.

62. Successors. This Agreement shall be binding on all successors, assignees, employees, and all those working for or on behalf of the State.

63. Defense of Agreement. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, the Parties shall seek to remove the matter to a federal court.

64. Enforcement. Failure by either Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

65. Non-Retaliation. The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

66. Severability. In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

67. Notice. "Notice" under this Agreement shall be provided via overnight delivery and shall be provided to the Governor of the State of Delaware and to the Attorney General of the State of Delaware.

68. Subheadings. All subheadings in this Agreement are written for convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the Parties shall follow the text of each provision.

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